

**UNIVERSITY OF IBADAN, IBADAN**

**FACULTY OF LAW**

**COURSE CODE: LCI201**

**COURSE TITLE: LAW OF CONTRACT I**

**LECTURER: DR. ONAKOYA**

**QUESTION:**

**Otondo, 13 year old boy and resident of Ajegunle town hired a car from Tomboy Car Hire Services. He drove the car to a party together with his friends. However, on his way from the party, he had an accident and the car was badly damaged. Since it was an express term in contract that the "hirer shall be liable for any damages to the car", the owner of Tomboy Care Hire Services intends to sue Otondo, who has refused to repair the damaged car in spite of countless call upon him to do so.**

- a. Advise the parties.**
- b. Would your answer be different where Otondo lied to Tomboy Car Hire Services at the time of entering the contract that he was 25 years old?**

**SUBMITTED BY: GROUP 13**

### **GROUP 13 MEMBERS**

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## **INTRODUCTION**

The formation of a legally enforceable contract is predicated upon the fulfillment of several foundational elements, amongst which contractual capacity stands as a paramount prerequisite. This doctrine stipulates that for an agreement to attain the status of a binding contract, all participating entities must possess the requisite legal competence to assume contractual obligations. The instant case provides a pertinent of the complexities arising when one contracting party lacks such full legal capacity, specifically concerning the involvement of a minor.

This analysis will meticulously examine the purported contractual relationship between Otondo, a 13-year-old, and Tomboy Car Hire Services, with a primary focus on the enforceability of the agreement under the principles of Nigerian contract law. The discourse will critically evaluate the general common law position concerning contracts entered into by minors, distinguishing between those that are voidable at the minor's option and the limited category of agreements, such as those for necessities, which may be binding. Furthermore, the inquiry will extend to assessing the legal ramifications of alleged fraudulent misrepresentation by the minor regarding his age at the time of contract formation, scrutinizing whether such deceit alters the fundamental protection afforded to minors or introduces alternative avenues for redress for the adult party. This analysis aims to delineate the respective rights and liabilities of the parties within the established framework of contract jurisprudence.

**The analysis will be done under these three (3) identifiable issues.**

- **Issue 1: Whether or not Otondo is liable for the damage of the car**
- **Issue 2: Whether or not the hired car was a necessity**
- **Issue 3: Whether Otondo's alleged misrepresentation of his age affects the contract**

## ISSUE ONE

### WHETHER OR NOT OTONDO IS LIABLE FOR THE DAMAGE OF THE CAR

The central point of contention revolves around the legal capacity to enter into a binding contract. To establish this, the general contractual principles concerning liability for damages, considering both express and implied terms that might typically govern such an agreement will be considered and, subsequently, the specific legal safeguards provided to minors (infants) under contract law, particularly focusing on the implications of the *Infants Relief Act* (and equivalent Nigerian legislation). By applying these established legal rules and principles, it will be ascertained whether the infant possessed the necessary capacity to contract, and consequently, whether he can be held liable for the car's damage.

### CONTRACTUAL TERMS REGARDING LIABILITY FOR DAMAGES

Contractual terms regarding liability for damages are provisions within a contract that define the extent to which a party is responsible for harm or loss arising from a breach or other issues. These terms aim to allocate risk between the parties. The terms can include limitations on the types or amounts of damages recoverable, or even completely exclude liability under certain circumstances. Some types include:

#### 1. Exclusion Clauses

These clauses exclude one party's liability for damages caused by breach or other circumstances. The purpose of this is to protect a party from certain types of claims. It is often used to avoid liability for indirect or unforeseeable damages. "The vendor shall not be liable for any loss of profit, business, or consequential damages arising from the use of the product." The quotation is an example of an exclusion clause. The clause must be unambiguous to avoid disputes, because the courts may not enforce clauses perceived as overly one-sided, especially in consumer contracts. Exclusion Clause has been clearly explained by Per Onyemenam, JCA in *Chevron Ltd. V. Titan Energy Ltd.* And also, in *S.P.D.C. Nigeria Ltd v. Anaro (2015)*, the Supreme Court emphasized that exclusion clauses must be expressly agreed upon and should not contravene statutory provisions or public policy.

## 2. Limitation Clauses

These clauses cap (limits) the maximum liability of a party, irrespective of the actual damages incurred. This helps to provide predictability in financial exposure and encourage manageable risk allocation. The contractor's liability for any breach of contract shall not exceed the contract value. In jurisdictions like the UK, courts evaluate whether the limitation is fair and reasonable under the circumstances. In *Eko Hotels Ltd v. Bokor (2012)*, the Court of Appeal held that limitation clauses must be brought to the attention of the other party at the time of contract formation.

## 3. Indemnity Clauses

These terms obligate one party (the indemnifier) to compensate the other (the indemnitee) for specific losses, often caused by third-party actions. This is meant to shift risk from one party to another and cover for liabilities arising outside the immediate control of the indemnitee. For example, **"The supplier agrees to indemnify and hold harmless the buyer against any claims, liabilities, or damages arising from intellectual property infringement."** In *Niger Insurance Co. Ltd v. Abed Brothers Ltd (1976)*, the Supreme Court enforced the indemnity clause, as it was clear and unambiguous.

## 4. Liquidated Damages Clauses

This predetermines a fixed sum payable in case of specific breaches, such as delays or non-performance. The purpose is to provide certainty and avoid lengthy disputes over damages and act as a deterrent to breaches. An example is **"In the event of project delay, the contractor shall pay \$1,000 per day as liquidated damages."** *A.G. Rivers State v. A.G. Federation (2006)*. It was affirmed that Liquidated damages clauses are enforceable when they reflect anticipated losses and are not unconscionable.

## 5. Warranty and Guarantee Terms

These terms outline obligations regarding product or service quality and liabilities for defects. They clearly outline what constitutes a defect and what remedies are available and also specify the warranty period. The purpose is to ensure the goods / services meet agreed standards. An

example is, "The seller guarantees that the software will be free from defects for 12 months and will repair or replace defective software at no additional cost." In *Incar Nigeria Ltd v. Benson Transport Ltd (1975)*, it was held that warranties must be expressly stated or implied based on the nature of the transaction.

Contractual terms may be express, or implied depending on how the terms are established and incorporated into the contract.

**1. Express Terms:** These are terms that are explicitly stated and agreed upon by the parties during the formation of the contract. They are either written or spoken and leave no ambiguity about their inclusion in the agreement. Some characteristics of an express contract include: clear definition, mutual agreement and legally binding. An example is where a delivery clause specifying; "The goods must be delivered by June 30" In *Bristol Tramways Carriage Co. v. Fiat Motors Ltd (1910)*: The court held that express terms agreed upon by parties take precedence over any implied terms unless they contradict statutory obligations.

**2. Implied Terms:** These are terms that are not expressly stated in the contract but are included by operation of law, custom, or the presumed intention of the parties. Courts may imply terms to ensure fairness or to give the contract business efficacy.

### **Sources of Implied Terms**

**a. By Law (Statutory):** Terms imposed by legislation, such as the Sale of Goods Act or Employment Laws. For example, under the Sale of Goods Act, goods sold must be of merchantable quality.

**b. By Fact (Presumed Intentions):** Based on what the parties would have agreed to if they had considered the issue. For instance, In a lease agreement, the landlord is expected to maintain the property in a habitable condition.

**c. By Custom/Usage:** Terms implied by trade practices or customs known to both parties.

For example, a contract in the shipping industry might include standard terms recognized globally.

**d. To Give Business Efficacy:** Terms implied to make the contract workable. For instance, In *The Moorcock* (1889), the court implied a term that a wharf owner must ensure a safe berth for a moored ship. Also, in *Liverpool City Council v. Irwin* (1977), The House of Lords implied a term into a lease agreement that the landlord must maintain common areas, even though it was not explicitly stated.

## EXAMINATION OF CAPACITY TO CONTRACT

In *Kabo Air v. Tarfa, Galadima*, J.C.A, as he was then, held that a contract must be an agreement which is legally binding on the parties to it and which, if broken, may be enforced by action in court against the defaulting party. This means that a contract is an agreement that both parties intended to be binding on them and enforceable by the court if there is a breach. This shows that the basic rule of a contract is that it is binding on the parties. There are basic elements in which a contract must embody for it to be valid, binding and enforceable in court. They are offer, acceptance, consideration, intention to enter into legal relations and capacity to contract, of which capacity to contract will be examined critically.

**In law, the capacity of the parties that make a contract is pivotal to the validity and enforceability or otherwise of the contract.** There are some categories of people in law who enjoy special privilege due to their mental capacity which is deduced to be lesser than that of an ordinary man at the point of entering into a contract which makes them lack the capacity to contract. Therefore, any contract entered into by this category of people will be null and void. This privilege is given to them as a form of protection against being exploited or defrauded in the making of a contract. This category of people include; **the illiterate, the infant, the drunken person and a lunatic.**

An illiterate person lacks the capacity to contract as the person, according to *Opota J*, "*is a person who is unable to read with understanding, the document made or prepared on his behalf...*" which in turn makes the contract to lack the essential ingredient of *consensus ad idem* which means the meeting of minds. There cannot be said to be a contract where only one party to the contract understands the terms of the contract and the other party who is illiterate does not. Laws in protection of the rights of an illiterate are the Illiterate Protection Act and the Land



Instruments Registration Law. Cases that point to the lack of capacity to contract of an illiterate are *P.Z & C.O. Ltd v. Gusau and Kantoma*, where the High Court defined what illiterate means, the case of *Osefo v. Uwania*, *S.C.OA. Zaria v. Okon*, *U.A.C. v. Edems & Ajayi*, etc.

Also, an infant lacks the capacity to contract as he or she is assumed to lack the mental capacity to enter into a contract which can lead to the deception of the infant. The common law and **Infant Relief Act of 1874** provides protection of an infant by the contract being voidable at the option of the infant, i.e it is not binding on the infant but binding on the other party as the common law posits. The infant is only liable for contracts of necessities and beneficial contracts of service. It was stated by common law that the age at which someone ceases to be regarded as an infant under the law is the age of 21 years and this has been contested in Nigeria as seen in the case of *Labinjoh v. Abake*, where it was settled that any commercial transaction governed by English law, whether statutory, common law, received or local, the age of majority is 21 in Nigeria, notwithstanding what the customary law states.

In the case of a lunatic or a drunken person, they also lack the capacity to contract as they are not mentally stable to intentionally enter into a contract. So, therefore, in the case where the contract was not for necessities, the onus lies on them to prove that they did not understand what they were doing at that time and that the other person was aware of their condition and still went ahead with the contract with the aim of defrauding them. For a drunk person, it is easily noticeable but this may not be the same for a lunatic. Nevertheless, contract entered by either of them in their lucid period is seen as valid, binding and enforceable in the court of law. The case of *Brown v. Jodrell* states the onus to be proved by the lunatic person to prove his or her lunacy.

From the foregoing, the absence of "consensus ad idem" in the contracts made with an illiterate person, an infant, a lunatic or a drunk makes such contract null, void, not binding and unenforceable in court and therefore negates the existence of a valid contract. These categories of people are regarded as disadvantaged and are protected against being deceived or defrauded into a contract by the laws made for them. They do not have the capacity to contract and entering into a contract with them is at the detriment of the other party as the contract cannot be enforced against them if there is a breach of contract. This, therefore portrays this element of contract as

crucial to the making of a valid and enforceable contract without which, even with the presence of all other elements, a contract will not be seen to have existed at all as an omission of one of these elements negates the whole contract.

## **RELEVANCE OF SECTION 3 OF THE INFANT RELIEF ACT**

The infant relief act overall states and explains the capacity of an infant to contract. It outlines the conditions for the contract with an infant to be void and the conditions for the ratification of a contract as entered into by an infant. By virtue of **section 3** of the act, no action can be brought against an infant when he comes of age, for the contract he made while still an infant. It states:

***“No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age.”***

A summary of the implication of section 1 and 3 of the Infant Relief Act was made in Sagay. He summarizes it in four points. He states that;

***“(a) All contracts of loan for non-necessary goods and accounts stated are absolutely void.***

***(b) Contracts for necessary goods and beneficial contracts of service, remain absolutely binding on the infant.***

***(c) Contracts which are binding on the infant, unless repudiated by him either during Infancy or within a reasonable period after the attainment of majority remain unchanged and unaffected by the act. These are contracts in which the infant acquires an interest in property, of a permanent nature, with continuing obligations attached to it. Examples are contracts for the purchase of shares in a company, partnership agreements, etc.***

***(d) Contracts which were not binding on an infant, unless ratified by him after the attainment of majority, were no longer ratifiable by him after majority.”***

This therefore shows that a contract entered by an infant is automatically void, the only exception is if it is a contract for necessary goods and if the infant ratified the contract, during a reasonable time at the attainment of majority age (within a reasonable period). The term “***necessaries***” has been examined and explained over time. According to Section 2 of the Sale of

Goods Act necessary goods are defined as “ goods suitable to the condition in life of such an infant or minor or other person, and to the actual requirements at the time of sale and delivery” which means that for certain goods to be considered as necessary goods, they have to be important to the living conditions of an infant. For instance, in *Roberts v. Gray*, an infant, was held liable for an executory contract for education and training. Although what the infant purchased here were services, it still extends to goods to an extent.

Apart from the definition of necessities by the Sale of Goods Act, *Lord Alderson B. in Chapple v. Cooper* explains that food, clothes and raiment were necessities. He also explains that “... it must be first be made out that the class itself is one in which the things furnished are essential to the existence and reasonable advantage and comfort of the infant contractor. Thus, articles of mere luxury are always excluded, though luxurious articles of utility are in some cases allowed.” From the explanation given by Lord Alderson, it can be inferred that for items to be termed necessities, their class must not be higher than the class of the infant. For example, an infant whose guardians struggle to provide three meals a day cannot be liable for buying a gold wrist watch, costing a million US dollars. Other forms of necessities include, apprenticeship and other beneficial contracts of service.

### **IMPLICATION OR RELEVANCE TO THE CASE STUDY**

It shows that for the corporation to sue, they have to prove that the hiring of the car was a necessary good for Otondo. That is, other options like walking and hailing a taxi to his friend's party or place are options he can't consider by virtue of his status, wealth of his parents or maybe health. This is almost impossible to prove because it is stated that Otondo lives in “Ajegunle”, somewhere not for people with very high status. Unless, he has a health condition that only allows him to hire cabs, thus making the car hire a necessary goods. If not, the contract becomes void, by virtue of section 1 of the Infant Relief Act of 1874. If Otondo ratifies the contract within a reasonable time upon the attainment of age of majority, then the amount of the losses can be recovered which still relies on Otondo's decision. So, either way, Tomboy Car Hire will be at a disadvantage if they sue.

### **RULES OF LAW IN ISSUE 1**

The fundamental principle governing this case is that an infant (minor) generally lacks the full capacity to enter into binding contracts. This is firmly established under common law and significantly reinforced by statute, specifically ***Section 1 of the Infants Relief Act***. This Act explicitly declares that ***"All contracts, whether by specialty or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessities), and all accounts stated with infants, shall be absolutely void."***

It is crucial to note that this statutory provision does not invalidate existing contracts an infant may enter into by other statutes, common law, or equity, except those already considered voidable.

Furthermore, while express terms in a contract typically take precedence over implied terms, as established in cases like ***Bristol Tramways Carriage Co. v. Fiat Motors Ltd (1910)***, this is only true unless they contradict statutory obligations. An exception to the general rule of unenforceability for minor's contracts is when the goods or services provided are classified as "necessaries." Even then, a minor is typically only liable to pay a reasonable price, not necessarily the contractually agreed price.

Lastly, recovery of losses might be possible if the infant willingly ratifies the contract upon reaching the age of majority. The overarching legal stance is protective of infants, operating on the assumption that due to their age, they lack the mental capacity for true ***consensus ad idem*** (meeting of the minds) when contracting, thus shielding them from being defrauded.

## **APPLICATION**

Applying these established rules to the present scenario, Tomboy Car Hire Service faces a significant hurdle in suing Otondo for damages. Despite the existence of an express contractual term stating that ***"the hirer shall be liable for any damage to the car,"*** this term cannot be enforced against Otondo. As a 13-year-old, he falls squarely within the category of an infant, directly protected by ***Section 1 of the Infants Relief Act***. Any attempt to enforce contractual liability for damages against him would contradict this statutory protection. Crucially, the "hiring of the car" for the purpose of attending a party is demonstrably not a **"necessary good"** in this

situation; it is recreational and not essential for his survival or well-being. Therefore, Tomboy Car Hire Services' attempt to sue for damages will likely fail because Otondo is an infant, and the service contracted for is not a necessary. While there is a remote possibility of recovery if Otondo willingly ratifies the contract after attaining the age of majority, if he declines, Tomboy Car Hire Services' most practical option would be to absorb the losses. **Given Otondo's age and the protective common law principles and the Infants Relief Act, the law presumes a lack of contractual capacity, thereby accentuating his non-liability for the damages incurred.**

## **ISSUE TWO:**

### **WHETHER OR NOT THE HIRED CAR WAS A NECESSITY?**

In the law of contract, there are certain situations where a person who ordinarily wouldn't have the full capacity to enter into a contract (like a minor or a lunatic) can still be held liable. One of those situations is when the contract is for **necessaries**. These are goods or services that are essential for everyday life, such as food, shelter, clothes, and medical care. They are vital for a person's survival, well-being, and general standard of living. In the context of contract law, particularly concerning minors, necessities refer to items or services a minor is legally permitted to contract for and be held liable to pay for, recognizing that despite their limited contractual capacity, they still need essential goods and services. As a result, contracts for necessities are treated as valid and enforceable, but only to the extent that the goods or services genuinely qualify as such.

**For a contract to be classified as one for necessities, two conditions must be satisfied:**

- (1) The goods or services must be suitable to the condition in life of the minor (their social or economic status); and
- (2) It must be a necessity as at the time the contract was entered into.

This principle was emphasized in the case of **NASH V. INMAN (1908)**, where a tailor sued a minor for the cost of several waistcoats. The court held that although clothing could generally be considered a necessity, the minor already possessed sufficient clothing, and therefore the

additional garments did not count as a necessity. The case established that necessity is both a functional and factual determination, depending not just on the nature of the goods, but also on whether the minor truly needs them at that time. Examples of necessities may include food, clothing, accommodation, education, medical care, and in some cases, transportation. On the contrary, luxuries, entertainment, and non-essential services are not considered necessities, and contracts involving them are typically void or voidable at the minor's option.

Another relevant case is **RYDER V. WOMBWELL (1844)**. In this case, an infant purchased a pair of expensive wine glasses and a decorative ring from a tradesman. The tradesman later sued for the price, arguing that the items were necessities. The minor argued that he was not liable because the items were not essential to his maintenance or well-being. The court held that the goods were not necessities under law and therefore could not be enforced against him.

In relation to Otondo's case, Otondo is a 13-year-old minor who hired a car from Tomboy Car Hire Services to attend a party with friends. The use of the car was clearly recreational, not essential. In Otondo's case, the hired car was neither necessary for his survival nor required for his well-being. Furthermore, since he is legally too young to hold a driver's license in Nigeria, it is unlikely that the hiring of a car by a 13-year-old can ever be viewed as appropriate. The nature and purpose of the hire (transportation to a social event) categorically places the contract outside the scope of necessities.

Although the Nigerian Constitution (1999, as amended) does not specifically address contracts for necessities, we rely largely on the Received English Laws which include the English common law, equity, and statutes of general application (that applied before January 1, 1900). This is backed by Section 45 of the Interpretation Act, which allows Nigerian courts to use these sources when there's no direct local legislation. Also, the Sale of Goods Act 1893, which is part of our law through reception, defines "necessaries" under Section 3 as:

"goods suitable to the condition in life of the minor or other person, and to his actual requirements at the time of the sale and delivery."

We also have the Nigerian case of **Labinjo v. Abake (1924)**, where the court listed basic needs like food, clothing, lodging, and education as examples of necessities. The court emphasized

that these must be reasonable and actually required by the person at the time. Also, in **Edokpolo & Co Ltd v. Ohenhen (1994)**, the Supreme Court highlighted that even if something looks necessary, it won't be enforceable if it's excessive or doesn't match the person's actual needs or social standing.

A minor or a lunatic won't be held liable for the full contract price but will have to pay a reasonable price for the necessities. This was seen in **Peters v. Fleming (1840)**, where a minor was made to pay for items that were genuinely useful and necessary to his education and social role.

Under common law principles, minors generally lack the legal capacity to enter into binding contracts, and contracts made by them are typically voidable at their option and largely unenforceable against them. Otondo, at 13 years old, falls squarely within this protected category, reflecting the law's protective stance toward those deemed unable to fully understand contractual obligations.

The **Infants Relief Act** creates a crucial exception to this general rule, allowing minors to be bound by contracts for "necessaries." This provision ensures minors can obtain essential items while protecting them from exploitation.

However, the car hire in this case fails to meet the necessities test on multiple grounds. First, transportation for recreational purposes does not constitute a basic need for survival or reasonable living standards. Second, the specific purpose – attending a party – demonstrates the non-essential nature of the contract. Third, alternative means of transportation were presumably available, making the hired car a luxury rather than a necessity. The Act's protective framework therefore applies, rendering the damage liability clause unenforceable against Otondo.

**Since the car hire agreement was not for necessities, the express contractual term holding the "hirer liable for damages" cannot be enforced against Otondo. The contract is voidable, and the minor cannot be held to its terms. Tomboy Car Hire Services' prospects of recovery appear extremely poor, as the law prioritizes protecting minors from improvident agreements over commercial certainty.**

While Tomboy Car Hire Services may explore alternative avenues such as parental liability or insurance claims, their direct action against Otondo is likely to fail. The case demonstrates the robust protection afforded to minors in contract law, even when their actions result in significant financial consequences for other parties. The company's failure to verify Otondo's age and capacity before entering the agreement may ultimately prove costly, highlighting the importance of due diligence in commercial transactions.

The broader implications of this case extend beyond the immediate parties. It reinforces the policy rationale behind the Infants Relief Act—that society has a compelling interest in protecting children from the consequences of their immature judgment in commercial dealings. The law recognizes that minors lack the experience and understanding necessary to make informed contractual decisions, particularly regarding long-term financial obligations.

From a commercial perspective, this case serves as a cautionary tale for businesses dealing with young customers. Companies must implement robust age verification procedures and consider the legal risks of contracting with minors. The harsh reality is that while the minor receives legal protection, the commercial party bears the full risk of any resulting losses.

Furthermore, this case highlights the potential gap between moral and legal responsibility. While Otondo may be morally culpable for the damage caused by his negligent driving, the law prioritizes his protection as a minor over the commercial interests of the hire company. This separation of moral fault from legal liability demonstrates the paternalistic nature of contract law concerning minors.

The decision also raises questions about parental supervision and responsibility. Although Otondo cannot be held contractually liable, his parents may face scrutiny regarding their duty of care and potential negligent supervision. Courts may examine whether reasonable parental oversight could have prevented the incident, opening alternative avenues for recovery.

From a public policy standpoint, the case underscores the need for clearer guidelines in industries that might interact with minors. The car hire industry, in particular, should develop standardized practices for age verification and risk assessment to prevent similar situations.



Legislative consideration might be given to specific provisions addressing high-risk activities involving minors.

Ultimately, the case illustrates the tension between protecting vulnerable minors and maintaining commercial certainty. The law clearly prioritizes the former, leaving businesses to manage the associated risks through careful screening procedures and comprehensive insurance coverage. Tomboy Car Hire Services' predicament demonstrates that ignorance of a contracting party's minority status provides no legal refuge when seeking to enforce contractual obligations. This case serves as a stark reminder that in the balance between commercial expediency and child protection, the law invariably favors the latter, regardless of the financial consequences for adult parties.

**B. Would your answer be different where Otondo lied to Tomboy Car Hire Services at the time of entering the contract that he was 25 years old?**

### **Issue 3: Whether Otondo's Alleged Misrepresentation of His Age Affects the Contract**

In contract law, **misrepresentation** is a significant concept that directly impacts the validity and enforceability of an agreement. This issue critically examines whether Otondo's false statement about his age – claiming to be 25 when he was 13 – affects the car hire contract with Tomboy Car Hire Services. Specifically, it explores how this misrepresentation influences the contract's enforceability and whether Tomboy Car Hire Services can recover damages for the extensively damaged vehicle. To thoroughly analyze this, it is essential to define the types of misrepresentation, outline their required elements, apply these principles to Otondo's conduct, and consider the available remedies and their practical implications, particularly concerning the contractual capacity of a minor under Nigerian law.

#### **TYPES OF MISREPRESENTATION IN CONTRACT LAW**

Misrepresentation is fundamentally a false statement of material fact made by one party that induces another to enter into a contract. As a **vitiating factor**, it has the potential to render a contract **voidable**. Misrepresentation is broadly classified into three types:

1. **Innocent Misrepresentation:** This occurs when the false statement is made honestly, with a genuine belief in its truth, even though it is factually incorrect. The maker is unaware of the statement's falsity (e.g., *Witney v. Seal Hyne*).
2. **Negligent Misrepresentation:** This arises when a false statement is made carelessly or without reasonable grounds for believing it to be true. This typically occurs where a duty of care exists between the representor and the representee (e.g., *Hedley Byrne & Co v. Heller & Partners Ltd [1963] AC 465*).
3. **Fraudulent Misrepresentation:** This is the most severe form, as defined by Lord Herschell in *Derry v. Peek (1889) 14 App. Cas. 337*. It involves a false statement made:
  - Knowingly, or
  - Without belief in its truth, or
  - Recklessly, careless as to whether it is true or false.

In such instances, dishonesty or recklessness is central to establishing fraud (e.g., *Sule v. Armoire*).

## ELEMENTS REQUIRED TO ESTABLISH MISREPRESENTATION

For a successful claim of misrepresentation, several key elements must be conclusively demonstrated:

1. **False Statement of Fact:** The representation must be a false statement of existing or past fact, not merely an opinion, future intention, or statement of law. While an opinion or intention typically does not constitute misrepresentation, an exception arises if the maker of the statement does not genuinely hold that opinion or intention (e.g., *Udogwu v. Oki; Bisset v Wilkinson [1927] AC 177*).
2. **Made by the Representor:** The false statement must have originated from one party to the other.

3. **Inducement:** The false statement must have induced the representee to enter into the contract. It must be material and demonstrably influenced the party's decision (e.g., *Edgington v Fitzmaurice* (1885) 29 Ch D 459).
4. **Reliance:** The representee must have reasonably relied on the false statement when entering into the agreement.

## **DOES OTONDO'S MISREPRESENTATION OF HIS AGE CONSTITUTE A VALID DEFENSE?**

Applying these principles to the facts, Otondo, a 13-year-old, falsely claimed to be 25 years old to secure a car from Tomboy Car Hire Services. This was a deliberate false statement of fact, satisfying the first element of misrepresentation. The statement was made at the time of contract formation, and it clearly induced and was relied upon by Tomboy Car Hire Services. It is highly improbable that a commercial car hire company would knowingly contract with a minor for a vehicle, especially one intended for a party, a setting with inherent risks. Otondo's knowledge that he was not 25 and his intent to obtain the car by this false statement strongly indicate **fraudulent misrepresentation** under the *Derry v. Peek* definition.

However, the crucial complicating factor is Otondo's status as a minor. Under Nigerian law, a minor (generally defined as a person under 18 years, though for contract purposes, common law often refers to 21 years) lacks full contractual capacity. Contracts entered into with minors are generally **voidable** at the minor's option, meaning the minor can choose to enforce or repudiate the contract. A significant exception applies to contracts for "necessaries" – goods or services essential for the minor's existence and suitable to their condition in life (e.g., *Nash v Inman* [1908]). A car hired for a party is demonstrably not a necessary; thus, the contract with Otondo would, even without misrepresentation, be considered non-binding and voidable at his instance.

The legal position regarding a minor's fraudulent misrepresentation of age is illuminated by the seminal case of *Leslie v Sheill* [1914] 3 KB 607. In this case, the court held that a minor who fraudulently misrepresented his age to obtain a loan could not be held liable in tort for deceit to effectively enforce a contract that was otherwise voidable due to infancy. The court's rationale was rooted in public policy, aiming to protect minors from contractual liability, even where

deceit is involved, preventing the adult party from using a tort claim to indirectly circumvent the minor's contractual incapacity.

Applying *Leslie v Sheill* to Otondo's situation, even though his misrepresentation about his age amounts to fraudulent conduct, it does not override the fundamental legal protection afforded to him as a minor. The courts are reluctant to permit a tort claim (such as deceit) if it effectively serves to enforce a contract that is otherwise unenforceable against a minor. Therefore, Otondo's misrepresentation, while fraudulent, does not bind him to the contract, nor does it make him liable for damages in a way that would indirectly enforce the car hire agreement.

## REMEDIES FOR MISREPRESENTATION AND THEIR IMPLICATIONS

The typical remedies for misrepresentation include **rescission** and **damages**.

1. **Rescission:** This involves setting aside the contract and restoring both parties to their pre-contractual positions. While rescission is the primary remedy, its feasibility in this scenario is limited as the car has been extensively damaged, making **restitution in integrum** (restoration to the original position) impossible.
2. **Damages:** For fraudulent misrepresentation, damages are ordinarily awarded in tort for deceit, aiming to put the injured party back in the position they were in before the contract (e.g., *Doyle v. Olby (Ironmongers) Ltd* [1969] 2 QB 158). However, the critical implication for Tomboy Car Hire Services is the *Leslie v Sheill* principle. This case severely restricts the recovery of damages from a minor for misrepresentation if doing so would indirectly enforce a voidable contract.
3. **Equitable Relief/Restitution:** While there might be a very limited scope for equitable relief or quasi-contract to prevent unjust enrichment, courts are generally disinclined to grant such claims if they circumvent the minor's legal incapacity (e.g., *Valentine v Henry* (1934) NLR 19). Restitution may only be ordered if it is possible to return specific goods or money still in the minor's possession, not to recover damages for a contractual breach or tort that effectively enforces the contract.

Otondo's false statement regarding his age constitutes fraudulent misrepresentation. However, his status as a minor provides him with substantial protection under Nigerian contract law. The courts consistently uphold the principle that **contracts for non-necessaries entered into by minors are voidable, and crucially, a minor cannot be held liable in tort for fraud if such liability would effectively enforce a contract otherwise unenforceable due to infancy.** Consequently, despite the clear dishonesty involved, the car hire contract is unlikely to be enforceable against Otondo, and Tomboy Car Hire Services will face significant difficulty in recovering damages for the vehicle. This outcome underscores the law's protective stance towards minors, placing the onus on adult parties to exercise due diligence in contractual dealings with individuals whose capacity may be limited.

## CONCLUSION

In conclusion, based on the principles of contract law concerning minors/infants, Otondo, a 13-year-old, is highly unlikely to be held contractually liable for the damage to the hired car. For Issue (1) and (2), the car hire agreement, being for recreational purposes (attending a party), does not fall within the definition of "necessaries." As such, the express term making the "***hirer liable for damages***" is generally unenforceable against a minor, as contracts not for necessities are voidable at the minor's option under common law and rendered non-binding by statutes like the **Infants Relief Act** and equivalent Nigerian reception laws. Tomboy Car Hire Services' direct claim against Otondo for the damage is therefore precarious, underscoring the legal protection afforded to minors from improvident agreements.

For Issue (3), where Otondo misrepresented his age as 25, the legal position, while seemingly more complex, largely remains the same regarding direct contractual liability. While his fraudulent misrepresentation might preclude him from seeking specific equitable remedies, it does not, under established legal precedent (such as ***Leslie v. Sheill***), transform an otherwise voidable or unenforceable contract into a binding one. The law prioritizes the protection of minors, regardless of their deceit, preventing the contract from being enforced against them directly. Tomboy Car Hire Services would still face significant hurdles in enforcing the liability clause contractually against Otondo, even if he had lied about his age.

Ultimately, Tomboy Car Hire Services' failure to adequately verify Otondo's age prior to the transaction places the primary risk and financial burden on them. This case serves as a stark reminder of the robust protection afforded to minors in contract law, highlighting the necessity for commercial entities to implement stringent age verification procedures and understand the limitations of enforcing contracts with underage individuals.

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